

A
DISCOURSE
OF
CONCERNING
RIOTS.

Occasioned by some of the People called
QUAKERS, being Imprisoned
and Indicted for a *RIOT*, for only
being at a peaceable Meeting to Wor-
ship *G O D*.

Written by one of that People,
THOMAS ELLWOOD.

*Thou shalt not Wrest Judgment, Deut. 16. 19.
If thou seest the Oppression of the Poor, and violent Perverting
of Judgment and Justice in a Province, marvel not at the mat-
ter: for he that is higher than the highest, regardeth, and
there be higher than they, Eccl. 3. 8.*

L O N D O N,
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The Occasion of this Discourse.

THE Proceedings of late, in City and Country, against some of the People called Quakers for Riots, for only Meeting peaceably together to serve and worship God, first put me upon Inquiring into the Nature of Riots. What upon that Inquiry I have found, I here present to Publick view, for common benefit, that none through ignorance may be occasion of bringing an unjust suffering upon an innocent People, and thereby Guilt upon themselves. I do not pretend much skill in Law (a Study and Profession I was never bred to.) But having spent some hours on this Occasion, in searching what the Law Books say in this Case, I hope I may (without incurring the Censure of Presumption) communicate my Gleanings to such of my well-meaning Country-men, as have not leisure or opportunity to inform themselves otherwise. I solemnly declare I have no other End or aim in this work, than to do Good and prevent Evil : Which Consideration, with men of Candour and Ingenuity, will be, I hope, a sufficient Apology for any seeming boldness in this Undertaking.

Thomas Butler Hesperia 17

A Discourse concerning Riots, &c.

That the Nature of a *Riot* may be the better understood, I intend to observe this Method.

1. To set down the strict and proper Signification of the word.
2. To Inquire what the statute Law says Concerning it.
3. To observe what the Common Acceptation of the word [*Riot*] is in Common Law.

4. To shew the Contrarieties between *Riots* and peaceable Religious Meetings

1. Then, to begin with the Signification of the word.

Cowell, a Doctor of the Civil Law, and the King's Professor thereof in the University of Cambridge, says, "The word *Riot* (in Latin, *Riotum*) cometh of the French, *Rioter*, that is, *Rixari* (which signifies to Chide, Scold, Brawl, Strive, or Quarrel.) *Cowelli* Interpreter, verbo *Riot*.

Lambard says, "Riot I think to be derived from the French word *Rioter*, "signifying to scold (or brawl) because such manner of Acts be commonly accompanied with words of Brawl. *Eirenarcha* l. 2. cap. 5.

Blunt says, *Riot* (in French *Riote*) is a *brawling scolding Contention*. *Glossograph*. verbo *Riot*.

Judge *Coke* says, *Riotum* (a *Riot*) cometh of the French word *Riotter* that is, *Rixari*: which (as I noted before) signifies to scold, brawl, quarrel, &c. it Inst.

3. part cap. 79. *Tit Riots*.

Keeble says, "Riot is of the French *Riotter*, to scold or brawl, because such manner of Acts be commonly accompanied with words of brawl. Assistance to Justices of the Peace, p. 645.

This is enough to shew how *unapplicable* the word *Riot*, in its proper and true signification, is to a *peaceable, quiet, Religious Meeting*, which admits not of any scolding, brawling, quarrelling, or the like.

2. As to *Statute-Law*, although divers statutes were antiently made for the Suppressing of Riots, Routs and unlawful Assemblies, as 13 H. 4. 7. — 2 H. 5. 8. and 19 H. 7. 13. Yet none of them define or describe what a *Riot* is. So that I find nothing in the *Statute-Law* will add Light to this Inquiry; and therefore we must have recourse to the *Common-Law*, and observe,

3. What the Common Acceptation of the word [*Riot*] is in the Common Law.

Cowell says, It signifies in our Common Law, *the forcible doing of an unlawful act by three or more Persons assembled together for that purpose*.

Cowelli Interpreter, verbo *Riot*. The same says *Lambard* in his *Eirenarcha* l. 2.

c.5. *The same* says *West*, Part 2. Symbol. Tit. Indictments. *The same* says *R. Blunt* in his *Glossograph. verbo Riot*. *The same* says *Tho. Blunt* in his *Law-Dictionary, verbo Riot*, *The same* (in effect) says the Book called *Les Termes de le Ley, Tit. Riot*, p. 244. And to the same purpose speaks *Keeble*, in his *Assistance to Justices of the Peace*, p. 645.

Thus in short they define a Riot: but in the further opening of it, there are seven things I observe the Law-books make essential to a Riot; which I will set down severally.

1. The first is the *Number of Persons* engaged in it; which may be any Number *above Two*.

2. The second is, that *there be some fact actually done*. For if three Persons or more should assemble together, and with intent to do such an act as would amount to a Riot: yet *if they do it not*, but depart again without doing any thing, *their so assembling is no Riot*.

"A Riot, says *Lambard*, is thought to be, where three or more persons be disorderly assembled to commit with force any such unlawful act, **And do accordingly execute the same**. *Eirenarcha* l. 2. c. 5.

Judge *Coke* says, "Riot in the Common Law signifieth when three or more **do** any unlawful act, as to beat a Man, &c. *Instit.* 3. Part. c. 79. *Tit. Riots*.

"A Riot, says *Pulton*, is where three persons or above do assemble themselves together to beat or maim a Man, &c. **And they do it**. *Pult. de Pace Regis*, fol. 25.

Dalton says, "Where three persons or more shall come or assemble themselves together, to the intent to do any unlawful act, with force or violence, against the Peace, or to the manifest terror of the People, — **If they do execute any such thing indeed**, then it is a Riot. *Country Justice*, c. 85. *Tit. Riots*. *The same* says *Meriton* in his *Guide for Constables* p. 93.

"A Riot, says *Keeble*, is thought to be, where three or more persons be disorderly assembled to commit with force any such unlawful act, **And do accordingly execute the same**. *Assist. to Just.* p. 645.

Shepherd having shewed what Number of Persons, and what kind of unlawful Act can make a Riot, says, "a Riot is, where they do not only begin, and go on, but **finish** their work, or with unlawful Weapons **do** such an unlawful act, *Grand Abridgment* Part 3. p. 259.

From all which it is evident, that for any number of Persons *barely to assemble themselves together* (though it were with a Riotous intention) is *no Riot*, unless the same persons being so assembled, do commit some such unlawful Act as in construction of Law will amount to a Riot, (and of what kind that must be, shall be our next Inquiry.) So that, if in a peaceable manner to preach or pray could legally be interpreted a Riotous act: yet those Meetings which are wholly silent, wherein there is *nothing said, nothing done*; or wherein (which is much alike) no proof can be made of any thing said or done (and such, it seems

seems, was that Meeting, which gave occasion to this discourse) such Meetings to be sure *cannot be Riots*.

3. A third thing is, that the act or deed done must be *not only unlawful*, but *injurious to another*. This appears by the Examples given by the most Eminent Lawyers that have written of this Subject.

Judge Coke says, "*A Riot in the Common Law signifieth, when three or more do any unlawful act: then to explain what he means here by an unlawful act, he immediately adds, As to beat any man, or to hunt in his Park, Chase or Warren, or to enter or take possession of another Man's Land, or to cut or destroy his Corn; Grass or other profit. Instit. 3. p. c. 79. Tit. Riots.*"

Shepherd, having shewed what number of persons must be present to make a Riot, adds, "*A second thing that must be in the Case to make up any Degree in these Offences must be, that the Assembly they go with, or their intent and design must be evil, to do some hurt to Men or that which is theirs: then instances thus, As breach of Inclosures, or Banks, or Conduits, Parks, Pounds, Houses, Barns, the burning of stacks of Corn, or the like; or to enter into Lands, to beat others, or to carry away their Wives, or the like. Grand Abridge. 3. part p. 259 Tit. Riots.*"

Fitz-herbert explains the unlawful act which makes a Riot, by these Examples, *viz. To beat or to maim another, Fitz-h. Office of Just. of Peace, p. 53.*

Lambard uses these Examples *viz. To beat a Man, or to enter upon a Possession forcibly. Eirenarcha, lib. 2. c. 5. The same are in the Book called Les Terms de la ley. Tit. Riot. p. 244.*

Pulton says, "*A Riot is where three Persons or more do assemble themselves together, to the intent to beat or maim a Man, to put down a house, wall, pale, hedge, or ditch; wrongfully to claim or take Common or way in a ground, to destroy any Park, Warren, Dovehouse, Pond, Pool, Barn, Mill, or stack of Corn; or to do any other unlawful act, with force and violence, and against the Peace, and they do it. Pult. de Pace Regis, fol. 25.*"

Meriton says, "*Where three Persons or more shall come or assemble themselves together, to the intent to do any unlawful act, with force or violence, against the Person of another his Possessions or Goods (then he instances particulars) As to kill, beat, or otherwise to hurt, or to imprison a Man; to pull down an House, Wall, Pale, Hedge, or Ditch; Wrongfully to enter upon or into another Man's Possession, House or Lands, &c. Or to cut, or take away Corn, Grass, Wood, or other Goods wrongfully; or to hunt unlawfully in any Park or Warren, or to do any other unlawfull act, (with force or violence) against the peace, or to the manifest terror of the People, — if they do any such thing in deed, then it is a Riot. Guide for Constables, p. 92. 93. For this he cites divers Authors, particularly Dalton, who gives the self-same Examples of an Unlawful Riotous act, and out of whom he seems to have transcribed this verbatim. So that I need not repeat what Dalton there says; but shall only observe out of him, that*"

that one of the Reasons he gives, why, *If divers do assemble and gather together to play at certain unlawful Games and Sports* (which he mentions) *it is no Riot*, is, because *These Meetings* (says he) *usually are not with any intent to offer or do violence or hurt to the Person, Possessions or goods of any other.* Dalt. Country Just. c. 85. Tit. Riots.

By all these Instances it is evident, that those *unlawfull acts* which the Common Law takes notice of as *Riots*, are such as are some way or other *injurious* and *hurtful* to the *Persons* or *Possessions* of others: But quiet and peaceable Meetings, for the worship of God only, are *no ways injurious* or *hurtful* to the *Persons* or *Possessions* of any. So that it is *not every* unlawful Meeting, or Assembly of People forbidden by the Law, that will amount unto a Riot. Tis true indeed, every Riot is an unlawful assembly; but (the Terms are not convertible) *every unlawfull Assembly is not a Riot.* Dalton says, *The manner of doing an unlawful act by an Assembly of People, may be such (and so handled) as that it shall not be punished as a Riot.* Country Just. c. 86. p. 221. And both Lumbard and Keeble, from Marrow, assure us, that *an unlawful thing may be so done, as that it cannot be made a Riot.* Eirenarcha, l. 2. c. 5. assistance to Just. p. 645. And so says Shepherd also, Grand Abridgment 3. part. p. 260.

And to manifest yet further, that by an *unlawful act* in a Riotous sense, the Law Books intend such an act as is *injurious* or *hurtful* to the person or possessions of another, they tell us that, unlawful act which makes a Riot, must be *Malum in se*, *Evil in it self* and of its own nature. This Dalton implies, when he says that to play at Foot-ball, Bucklers, Bear-baitings, Dancings, Bowls, Cards, or Dice, or such like Games or disports (which he confesses are unlawful) *is no Riot*, because *they are not Evil in themselves.* Country Just. c. 85. But in the last Edition of Dalton, (printed last year, with many considerable Additions by another hand) it is said expressly, “ an unlawful assembly, Riot, or Rout, is where three or more “ shall gather together, come or meet in one place, to do some unlawful act “ with violence, and that *unlawfull act must be Malum in se*, that is, *Evil in it self*) and not *Malum prohibitum* (not evil forbidden, only.) See the new Edition of Dalton's Country Justice, c. 136. Now if (according to these) that unlawful act which makes a Riot must be *evil in it self*; or *injurious*, then surely it cannot possibly be a Riot for people to assemble peaceably and quietly together to worship God: for certainly no man can harbour a thought, that it is *evil in it self* for Men and Women to worship God, or to assemble together, in a peaceable manner, for that end. And it is manifest that the statute of the 22 Car. 2. (commonly called the Conventicle act) which prohibits those Meetings to greater Numbers, doth not take those Meetings to be *evil in themselves*, because it permits them to lesser Numbers.

4. A fourth thing essential to a Riot is force or violence. So all agree.

Cowel says, It signifies in our Common Law, the forcible doing of an unlawful

lawful act, &c. Cowels Interpreter, verbo Riot.

West says, A Riot is the forcible doing of an unlawful act, &c. Symbol. 2. part Tit. Indictments.

R. Blunt says, Riots signifies in our Common Law, the forcible doing of an unlawful act, &c. Glossograph. verbo Riot.

Tho. Blunt says, Riot signifies the forcible doing an unlawful act, &c. Law-Dictionary, verbo Riot.

Keeble says, A Riot is thought to be where three or more persons be disorderly assembled to commit **with force** any such unlawful act, &c. Alist to Just. p. 645.

Lambard not only defines a Riot to be, where three or more persons be disorderly assembled to commit **with force**, any such unlawful act: but at his entrance upon the Discourse of Riots, having premised that many Contentions may be without any apparent shew of Assembly against the Peace; *I will leave them*, says he, *and resort to those other that the Commission saith to be done vi armata*; and thereupon he proceeds to describe Riots, Routs, &c. So that it is plain he lookt upon that act which could make a Riot, to be an act done **vi armata**, with **armed force**, or, as the Phrase is, **with force and Arms**. And therefore, treating of what one Justice may do in the Case of a Riot, he says, *He alone (or with his Servant) may go to the place, and such as he findeth Riotously assembled and Armed, he may arrest, — and may take their Weapons from them.* Eirenarcha, l. 2. c. 5. Tit. Riots. Which implies that they must be **Armed**, they must have **Weapons**, that commit a Riot.

But *Shepherd* speaks full and plain: For describing an unlawful assembly, Rout and Riot, he says, 'Rout is, where being thus met they move, being **weaponed**, from the place of their Meeting towards the place where they propose to do this act, in a **turbulent** way to effect it, &c. But a Riot, he says, is 'where they not only begin and go on, but with **Unlawful Weapons** finish or do such an unlawful act. Grand Abridgment 3. part. p. 259.

Dalton sayes expressly, *It seemeth it can be no Riot, except there be an intent precedent to do some unlawful Act, and with Violence or Force*, Count. Just. ch. 85. Thus all concur, that that Act which makes, or can be made a Riot, must be a **forcible Act**, or an Act done *with force*. So that **No Force, No Riot**. And therefore, seeing our peaceable, quiet, Religious Meetings are *wholly free from force and violence*, it follows that they are also *free from Riot*.

Now that none may err through Misapprehension that the words [*vi armata*, or *with force and Arms*] are words of *Form* only, and not *material* and *essential* to a Riot; let me add what *Lambard* saith thereupon. 'Even as the *Civilians* do handle two sorts of *Force*: of which they call the one *vim*, and *vim simplicem, privatam, sive quotidianam*; and the other *vim armatam, atrocem, & publicam*, because the first is void of any fearful outrage, and the latter seemeth to kindle the Coals of Sedition it self: So likewise, saies he, our

‘ Law taketh knowledge of two manners of Force: whereof the one is rather intellectual than actual, and may therefore be termed, *A Force in the Consideration of Law*, which accounteth all that to be *vis*, which is contrary to *Jus*. But the other is *apparent* by the Act it self, which always carrieth some fearful *Shew*, and matter of *Terror* (or trouble) with it. *Eirenar. l.2.c.4.p.140*. And therefore (*l.2.c.5.p.174*.) he explaines [*vis armata*] to be that, which doth bring manifest *Terror unto the Subject*. And as he makes that which he calls an intellectual force, or a force in the consideration of Law, to relate to Suits and Actions at Law for Trespasses, &c. So (in his first Book, c.2.p.7.) he declares, It is *no part* of the Justices Office to forbid lawful Suits and Controversies, but to suppress *injurious force and violence moved against the Person, his Goods or possessions*. And in p.10. he saies, ‘ I conclude that this *furious Gesture and beastly force of body or hands* (and not every Contention, Suit and disagreement of minds) is the proper subject and matter about which the Office of the Justices of the Peace is to be exercised. Now since a Riot is the proper subject and matter about which the Office of Justices of the Peace is to be exercised, it follows that that *vis armata*, that force and Arms, which is of necessity to the making of a Riot, must needs be *this furious Gesture*, this *beastly force of body and hands* (as *Lambard* calls it) which brings *terror to the people*, and which *our Meetings are free from*. *Dalton* also, undertaking to shew what the Law accounteth to be *force*, and what *weapons* be offensive in these and the like cases, saies, ‘ To have *Harness, Guns, Bows and Arrows, Cross-bows, Halberts, Javelins, Bills, Clubs, Pikes, Pitchforks, or Swords* not usually born by the Parties, shall be said to be *vis armata*. And so to use casting of Stones, hot Coals, scalding Water or Lead, or be said to be *vis armata*; *Country Just. c.77. p.203*.

5. A Fifth thing is the *previous Intent* of the Persons assembled. Both *Lambard* and *Keeble* tell us, *The intention and purpose of those that be assembled is worthy the weighing*. And they instance some Cases of persons that being met at an Ale-house, a Christmas-Dinner, or a Church Ale, fell together by the Ears and fought, yet this was no Riot (but a sudden Affray only) because *they did not come thither with intention to fight*; *Eiren. l.2.c.5. Assist. to Just. Tit. Riots*.

Shepherd saies, ‘ If many come together *unarmed*, they know not why themselves; this is no offence punishable, unless it can be known, that they came to some *Evil Intent*, or that they do *miscarry themselves* in some *Evil Act*. Now, since we come together *unarmed*, not to any *Evil Intent*, but to a *very good Intent*, namely, to serve and worship the true God, in a peaceable manner, and do *not miscarry* our selves in any *Evil Act* in our Meeting: Surely (if *Shepherd* might be Judge) *Our Meetings are not Riots*.

Dalton speaks home; It seemeth, saies he, **it can be no Riot**, except there be an **intent precedent** to do some unlawful Act, and with violence or force; *Count. Just. ch.85*. Now the intent of our Meetings being *only* to serve and worship God, and that *not* with violence or force, but in peace and quietness, it seemeth such Meetings cannot be Riots.

6. A Sixth thing essential to a Riot is, *Breach of the Peace*. The Peace must be broken, or it is *no Riot*. In this all agree. And lest any doubt should arise what is intended by, or what will amount to a Breach of the Peace in this Case, the Law-Books well explain it.

Lambard says, 'Two special things there are, that be common and must *concur*, both in the unlawful Assembly, Rout and Riot; the one that three persons (at the least) be gathered together: — the other, that they being together, do breed some *apparent disturbance* of the Peace, either by signification of *Speech*, *Shew of Armour*, *turbulent Gesture*, or *actual and express violence*: so that either the peaceable sort of men be *unquieted and feared* by the fact, or the lighter sort and busie-bodies be *imboldened* by the Example; Eien. l. 2. ch. 5.

Cowell, following him, says, 'Two things are common both to Riot, Rout and unlawful Assembly; the one, that three persons at the least be gathered together: the other, *that they being together do breed disturbance of the Peace*; (How?) either by signification of *Speech*, *shew of Armour*, *Turbulent Gesture*, or *actual and express violence*; Coweli Interp. verbo Riot.

Shephard says, 'These two things are common both to the Riot, and the Rout, and unlawful Assembly. There must be three persons at the least gathered together in it: the other, *that being together, they do breed disturbance of the Peace*, either by signification of *Speech*, *shew of Armour*, *Turbulent Gesture*, or *actual and express violence*, &c. Grand Abridgment, part 3. p. 259.

Dalton says, 'As there must necessarily be three persons at the least, assembled together, to make a Riot, &c. So their being together and their *demeanour must be such*, as shall or may breed some *apparent disturbance* of the Peace; either by *threatning Speeches*, *Turbulent Gesture*, *shew of armour*, or *actual force or violence* (to the *terror and fearing* of the peaceable sort of People, or to the *emboldening and stirring up* of such as are *busy-headed*, and of *evil disposition*, by such fact) *or else it can be no Riot*, &c. Country Just. c. 87.

Tho. Blunt says, 'Two things are common both to rout, riot and unlawful Assembly; The one, that three persons at least be gathered together: The other, that they being together, *do disturb the Peace*, either by *words*, *shew of Arms*, *Turbulent Gesture*, or *actual violence*; Law-Diction. verbo Rout.

Keeble says, 'Two special things there are that be common, and must *concur* both in the unlawful Assembly, Rout and Riot. 1. That three persons at the least be gathered together; — 2. That *their being together do breed some apparent disturbance of the Peace*, either by signification of *Speech*, *shew of Armour*, *Turbulent Gesture*, or *actual and express violence*. So that either the peaceable sort of men be *unquieted and feared* by the Fact, or the lighter sort and busie-bodies be *imboldened* by the Example; Assiz. to Just. p. 645. And says he, p. 646. (And so says Lambard also, Eien. l. 2. c. 5.) If many do

meet to play at Bowls, Tables, or Cards (which yet are unlawful Games forbidden by the Statute of 33 H. 8. 9.) and do use no misbehaviour against the Peace, they are not punishable in this degree. How much less then are they punishable in this degree, (viz. of Riot) who meet together for a good and godly end only, to worship God, and use no misbehaviour against the Peace !

By all these Testimonies it appears, both that to the making of a Riot there must of necessity be a *breach of the Peace* ; and also wherein that Breach of the Peace consists, namely, in *threatning Speeches, shew of Armour, turbulent Gesture, or actual violence*. And that this is indeed the true and proper meaning of the words [*Breach of the Peace*,] might be further confirmed by other Evidences, out of Lambard's Eiren. l. 1. c. 2. and l. 2. c. 3. But most plainly out of Dalton, who having defined Peace (in a legal sense) to be *An Abstinence from actual and injurious force and offer of violence*, says, *The breach of this Peace seemeth to be any injurious force or violence moved against the person of another, his Goods, Lands, or other possessions, whether it be by threatning words, or by furious Gesture, or force of the body, or any other force used in terror* ; Count. Just. c. 3. But well known it is to all, that know our Meetings, that no injurious force or violence is moved by us in our Meetings against the Person, Goods, Lands, or Possessions of any : So that the peace is not broken by us in our Meetings, and consequently our Meetings are not Riots.

7. The Seventh and last thing essential to a Riot is, *Terrour to the people* ; that is, That the thing done be either of it self, and in its own nature so dreadful, or performed in such a formidable and affrighting manner, that the People are thereby *struck with terrour*.

Lambard, proceeding to speak particularly of Riots, Routs, &c. says, ' I will leave those contentions which may be without any apparent shew of Assembly against the Peace, and resort to those other that the Commission saith to be done *vi armata*, and that to bring **manifest Terrour** unto the subject. And a little after, he mentions the use of Harnesse on Midsummer-night in London, or on May-day in the Country, ' Which (being for sport only) is, says he, ' no such offence (that is, no Riot) seeing no Terrour followeth of it : ' And, says he, the words **In terrorem populi** seem to be material in an Indictment of this kind ; Eiren. l. 2. c. 5.

Dalton says, ' An Assembly of an hundred persons or more (yea though they be in Armour) yet if it be not in *terrorem populi*, and were assembled without any intent to break the peace, it is not prohibited by any of these Statutes (viz. which were made against Riots, &c.) nor unlawful. And he gives the same instance Lambard gave of the Assembly of People, and their use of Harnesse upon Midsummer-night in London, ' Which (says he) being only for disport, is lawful ; and though it be with a great Assembly of People and in Armour, yet it being neither in *terrorem populi*, nor to do any Act with force and violence against the peace, it is lawful, saith Dalton, Count. Just. c. 8.

c. 85. And he shews further, (ch. 87.) ' That if divers in a Company shall go, on a lawful occasion, armed and in harness, *to the terror of the people*, though they have no intent to fight, or to commit a Riot, yet *this is a Rout* by the manner of their going. But on the other hand, if they had gone in privy Coats of Plate, Shirts of Mail, or the like, to the intent to defend themselves from some *Adversary*, *This* (says he) *seems not punishable within these Statutes*; and the Reason he gives is, *For that there is nothing openly done in Terrorem populi, to the terror of the people.*

Keeble (treating of Riots, and reciting the words of Lambard, though he cites Crompton for the Author) says, ' To use Horns on Mid-summer Night in London, or on May day in the Country, for sport only, *is no such offence* (that is, is no Riot) *seeing no terror followeth it; and the words* [in Terrorem populi] *seem*, says he, *to be material in an Indictment of this kind.* Assist. to Just. p. 646. With Keeble's Judgment I chuse to close this point, both as he is the last (so far as I know) that hath written on this Subject, and for that his Book hath the Approbation of all the twelve Judges.

Many other Authors I could have quoted on this Subject, & some too of great Name, as Marrow, Kitchin, Brook, Crompton, &c. whom I find cited by others to this purpose; but not having read these Authors my self, I forbear using them, that I might not rely on any authority taken up at second hand.

Thus having gone through the several Parts of a Riot, according to the Distribution premised, I take a Riot, in short, to be this. When *three persons, or more, are assembled together in Arms, with a fore-intent and purpose to do such an unlawful act, as is both evil in it self, and hurtful to another, either in person, or estate; and do it, in a forcible manner, to the apparent Breach or disturbance of the Peace, either by threatening words, shew of Armour, turbulent Gesture, or open violence, and to the manifest terror of the People.*

4. Now because (according to the Rule, *Contraria juxta se posita magis elucescunt*, i. e.) when Contraries are set one by another, their Contrarieties do the more manifestly appear, I will briefly set forth the Contrarietys between Riots and peaceable Religious Meetings, by opposing our Meetings to Riots, through the several Particulars before mentioned.

And first as to *number of Persons*. In a Riot (if the fact be such as the Law accounts Riotous) any number of Persons *above two* is sufficient to commit a Riot.

But in those Meetings for the exercise of Religion which are forbidden by the Conventicle-act, it is not unlawful even by that act for *four persons beside the Family* (how numerous soever that be) to assemble together. So that even in point of Numbers there is a *material difference* between Riots and Religious Meetings: which shews, the Parliament that gave liberty to *four persons* besides the family to meet, did not understand those Meetings to be Riots. The Conventicle-act doth not permit Riots: But the Conventicle-act doth permit

Religious Meetings to such Numbers as (if those Meetings were of a Riotous nature) are sufficient to make a Riot ; Therefore *such Meetings are not Riots.*

2. In a Riot there must of necessity be some *overt act*, some *deed done*, some *fact committed* by the persons assembled (which may come under the Cognizance of outward evidence) more than their *bare assembling* together, else it cannot be a Riot.

But (as in none of our Meetings there is any Riotous act, so) in such of our Meetings as are wholly silent there is *no overt act* at all, *no deed done*, *no fact committed* by any of the persons assembled (which may come under the cognizance of outward evidence) more than their *bare assembling* : therefore *such Meetings cannot be Riots.*

3. In Riots, the fact done must be *not only* unlawful, but *injurious* or *hurtful* to another, either in *person* or *estate*.

But our Meetings (if at all unlawful) are *no way* *injurious* or *hurtful* to any, either in *person* or *estate* : therefore *our Meetings are not Riots.*

4. That act which makes a Riot must be done *vi armata*, with *force* and *arms*, or in a *forcible* manner.

But our Meetings are *not held*, nor is there any thing done by us in them, *vi armata*, with *force* and *arms*, or in a *forcible* manner : therefore *our Meetings are not Riots.*

5. To make a Riot, there must be a *previous intent* in the persons assembled, to do some such unlawful act as is evil in it self and hurtful to others, and that with *force*.

But in our Meetings, we have *no previous intent* to do any such unlawful act, as is evil in it self and hurtful to others; nor have we any other intent at all, than sincerely and really to serve and worship God, and that without *force* or *violence* : therefore *our Meetings are not Riots.*

6. It is not a Riot, unless the *Peace be broken* or disturbed by the persons assembled, either by *threatning speeches*, shew of *armour*, *turbulent Gesture*, or *open violence*.

But in our Meetings, the *Peace is never broken* nor disturbed by us, we give *no threatning Speeches*; we shew *no armour* (nor have any to shew) we use *no Turbulent Gestures*; nor do we offer *violence* to any : therefore *our Meetings are not Riots.*

7. It is not a Riot, except it be done with *Terrour to the People*. But our Meetings are *not held with Terrour to the people* : therefore *our Meetings are not Riots.*

How truly I have stated the Case, on the one hand, with respect to Riots, the many Quotations in the fore-going Discourse will shew. How true an account, on the other hand, I have given of our Meetings, the whole Nation (and all Nations wherein we have Meetings) may judge. Upon the whole, my request is, that all, both Justices and Jurors, who are or shall be concerned in this or the like Case, will seriously weigh the matter, and not strain the Law beyond

beyond its due Extent. *To oppress any by colour of Law, is the greatest abuse of Law.* I intreat Grand Juries therefore to regard Justice, to regard their Oath. They are sworn expressly to *Examine diligently, and true presentment make, &c.* They are sworn expressly, to *present the Truth, the whole Truth, and nothing but the Truth, to the best of their knowledge.* Now that they may not break their Oath, but that they may true Presentment make, that they may present *nothing but the Truth*, that they may not present a *Falskood* for Truth, I intreat them again and again to *examine diligently* both what Riots are, and what our Meetings are. And if upon such *diligent Examination* they find any of those *material* and *essential Differences* between our Meetings and Riots (which I have before observed) that then they will, like just Men and Christians, keep themselves clear from making *false* Presentments instead of *True*, from writing *Billi vera* (a true bill) upon that Bill (and delivering it in as such upon their Oaths (which perhaps in three parts of four is utterly and apparently false, The like request I make to Petit Juries in the like case, who are sworn *Well and truly to try, and true deliverance make, &c. according to their Evidence.* Which evidence ought to be of good fame: for it's a Maxim, *Justitia non potest cum Scelerato commercium habere*; Justice can have no Commerce with a wicked graceless person: And *Turpes a tribunalibus arcentur.* Vile persons ought to be rejected by Courts of Judicature. And therefore witnesses are required to be; not only *Legales*, Lawful men, but *Probi*, virtuous and good men, men of approved honesty, from such Witnesses the Jury may expect (and ought to have before they find any Man guilty) a plain, full and *clear* evidence of *every* material part of the charge laid against him; and let me add, of all such Circumstances also, as may any way *aggravate the Offence*: for nothing that may endamage the accused party should be taken upon Presumption or supposition, nor without plain and clear Proof. The witnesses disposition is therefore called evidence, because it makes the Truth or falskood of the charge evident and plain: and says Coke, *Probationes debent esse evidentes & perspicue*; proofs ought to be evident and clear. O that all men concerned in these and such like Cases, would so *conscienciously* and considerately discharge the duty of their Offices, that with *comfort* they might give accompt thereof at the Great Judge at the *last* day! For why should any draw upon their own heads the guilt of Perjury, and the vindictive cry of oppressed Innocents?

But if there be any that are eager and desirous in their minds to have our Meetings punished as Riots; Let me intreat them also to consider, How *dishonourable* a Reflection it would be both to the *Government*, and to the *Religion* established thereby, If peaceable, quiet, Religious Meetings, conscienciously holden only and alone for the worship and Service of God (wherein *no Evil* is either acted or intended, *no violence* or force used, *no breach* of the *peace* made; *no terror* given: but an innocent, meek, passive, and truly Christian behaviour and deportment shewn) should be judicially declared *Riots*, and punished

ished as such: when at the same time our Law-Books assure us, that not only *playing at Bowls, Dice, Cards, &c.* But even the Numerous assemblies that frequent those more Clamorous, Rude, Impetuous and Boisterous sports of *Dancings, Foot-ball playing, Baerbaitings, Bucklers or Fencings*, and such like, are *not Riots, Routs*, nor unlawful assemblies, shall such *vain and Ruffianly* sports, wherein so much *Rudeness, disorder and Prophanness* is committed, (and which seem to be so near of Complexion to Riots) be declared to be *no Riots*: and shall *peaceable and Religious Meetings*, wherein only *God is worshipped* (and which have *no shew nor appearance of Riots in them*) be condemned for *Riots! God forbid.*

If any should think our Meetings may be Riots, because we sometimes meet in the open Streets or in the High-way; Let such consider, that we do not meet in the Streets or Highways by *Choice*, but by *Constraint*. We come not with *intent* to meet in the Streets or High-ways, but in our Meeting-Houses. But where we are *shut out* and *kept out* of our Meeting-Houses, we are *necessitated* to meet abroad. And yet there also we demean our selves *peaceably* and *quietly*, not offering violence or injury to any, nor coming with any Intent so to do. And if any should apprehend, that our not departing immediately upon a Constable's making Proclamation, doth make our Meetings Riots, it may not be amiss for such to inquire, whether there be any statute *in force*, that doth empower Constables, and other inferiour Officers, to make such Proclamation, and requires the persons assembled forthwith to depart thereupon. The act made in the first year of *Q. Mary*, c. 12 (which appointed the making of Proclamation, in some Cases of another nature, though not by a Constable, so far as I observe) being but a temporary act continued by *Q. Eliz.* (in the first year of her Reign, c. 16.) to the end of the next Parliament after her death is long since *expired*, or discontinued, as *Pulton, Dalton and Keeble* declare. However, if it were in force, it would not reach us or our Meetings, which are *not guilty* of any of *those Offences*, against which that act was made.

Lastly, I desire the Reader to observe, that the difference between a Riot, Rout and unlawful assembly, is only in the execution or Non-Execution of that act, which, being done, makes a Riot. In all things else they are alike, there must be the *same number* of Persons to make an *unlawful assembly*, as to make a *Riot*. There must be the *same previous intent* in the one as in the other; the fact intended to be done in an *unlawful assembly*, must be of the *same nature* with that which is done in a *Riot*, that is, it must be evil in it self and injurious to another, as well in the one as in the other. There must be *vis armata*, force and arms to the making of an *unlawful assembly*, as well as to the making of a *Riot*. There must be *breach of the peace* to make an *unlawful assembly*, as well as to make a *Riot*. There must be *Terror to the people* to make an *unlawful assembly*, as well as to make a *Riot*. All the ods is, that if the Persons

so assembled, in such forcible manner, to the Breach of the Peace and Terror of the People, do not actually perform that unlawful act, which is evil in it self and injurious to the Person, or Possessions of another, but depart again *without proceeding to do it*, then it is only an *unlawful assembly*; whereas if they indeed do it, then it is a *Riot*. And a *Rout* is a degree between both, when after the Persons are so assembled, there is some *Progress* made, they ride, go, or move forward, towards the Execution of such Unlawful and injurious act, and yet do not actually execute it.

Postscript.

Since I have undertaken to discourse of the nature of *Riots*, and there is some mention in Holy Scripture of *Rioting*, &c. it will not be amiss to shew what *Rioting* is in Scripture sence also.

The Prodigal Son (in the Parable, Luke 15. 13.) is said to have wasted his substance with *Riotous living* [ζῶν αὐωτός] living *Profusely and dissolutely*, as *Pasor* explains it. The same word (in the substantive) is used, Ephes. 5. 18. and rendred, *Excess*; which *Bera* expounds to be, *Omnis Profusio, eaque summa cum Turpitudine conjuncta*; All manner of Profaneness, and that joyned with the greatest Filthiness. It is used again, Tit. 1. 6. where it is required that the Children of such as were to be ordained Elders, should be [οὐκ ἐν αἰσχροῦ καὶ αὐωτός] not accused of *Riot*, that is, of leading a *dissolute and profuse* life. The same word is used again, 1 Pet. 4. 4. and very well explained by the Verse foregoing. For the Apostle having said (Verse 3.) *The time past of our lives may suffice us to have wrought the will of the Gentiles, when we walked in Lasciviousness, Lusts, Excess of Wine, Revellings, Banquettings and abominable Idolatries*; adds Verse 4.) *Wherein they (the Gentiles, who yet walked in such things) think it strange, that you ran not with them to the same Excess of R I O T, viz. to walk in Lasciviousness, Lusts, Excess of Wine, Revellings, Banquettings, &c.* So that it is clear, that by *Riot* here (ver. 4.) he means the *Lasciviousness, Lusts, Excess of Wine, Revellings, Banquettings and abominable Idolatries* (which he had newly mentioned, Verse 3. and) which the Christians, it seems, before Conversion, having walked with the Gentiles in, were now, after their Conversion to Christianity, thought strangely of, and blasphemed, but the Gentiles, for not running on still in the same. These are of the Places (so far as I observe) wherein *Αὐωτία* is Read in the New Testament; ' It signifies, says *Leigh*, Two things: 1. *Excess in Expences*, opposite to *Frugality*. 2. *Excess in Delights* (whether it be in *Meats or Drinks*, or the like) opposite unto *Temperance*: and it signifieth these *Vices* in an *Extremity*. Or (as he gives it from another) *Αὐωτία*, that is, *Prodigality*, is taken in a twofold sence: either Properly, and then it signifies that *Vice*, whereby any one keeps not his Estate, Wealth, or Money; but squanders it away lightly and unprofitably upon any thing without any apparent advantage to himself or others. Or Improperly, and then it signifies *Luxury*, by which we lavishly waste our Estates, upon our Pleasures and Lusts, upon Plays, Feasts, Excess of Apparel, &c.

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Carmel. a Lapide says, *Azoria* signifies, 1. Surfeiting by too much Eating or Drinking, Excess, Lasciviousness. 2. Luxury, and Lust. Zanchy says, It signifies *Riotous Excess* and *Profuseness* joyn'd with the greatest Villany. This, and more of this kind, see in Leigh's Crit. Sacra. which sufficiently shews what kind of thing *Riot* was in the Apostles daies.

Mention also we have of *Rioting*, in *Rom. 13. 13.* Let us (says the Apostle) walke honestly (or decently, *εὐσχημένως*) as in the day; not in *Rioting* and *Envy* and *Drunkenness*, not in *Chambering* and *Wantonness*, not in *Strife* and *envying*. *Rioting* here may well be understood by its Companions it is associated with, viz. *Drunkenness*, *Chambering*, *Wantonness*, *Strife*. The word here used for *Rioting* is *κατακαταναλίσκειν*, which in *Gal. 5. 21.* and *1 Pet. 4. 3.* is rendred *Revelling*. Nor is it elsewhere used in the New Testament, that I remember. In Latin it is turned *Commissatio*, which (says Leigh) signifies *Excess of Belly-cheer in Riotous Feasting*. And, he says, *St. Ambrose* expounds it, *Luxurious Feasting and Banqueting*, wherein (says he) men take liberty to all *Lascivious* and *Riotous* behaviour; Crit. sacra.

There is one place more in the New Testament where we read the word *Riot*, and that is in *2 Pet. 2. 13.* where the Apostle speaks of some, who counted it pleasure to *Riot* in the day time. The Greek word there used is [*κατακαταναλίσκειν*] which signifies *Excess of Pleasures* and *effeminating Delicacies*. It is used in the same sense, *Luke 7. 25.* and *James 5. 5.* in which last place it is joyned with a word that signifies to live *Wantonly*. (Ye have lived in Pleasure on the Earth, and been Wanton [*ἐκπαταλάσατε*] ye have nourished your hearts, as in a day of slaughter; ye have condemned and killed the Just, saith the Apostle James) a word not elsewhere used in the New Testament, save in *1 Tim. 5. 6.* where we read, She that liveth in Pleasure [*ἡ δὲ ἐκπαταλάσα*] is dead while she liveth. These are the Pleasures the Apostle Peter called *Riot*. And this is all I remember to have read of *Riot* and *Rioting* in the New Testament.

In the Old Testament, I meet with it but twice, *Prov. 23. 20.* Be not among Wine-bibbers; amongst *Riotous Eaters of Flesh*. Chap. 28. 7. He that is a Companion of *Riotous persons*, shameth his Father. In the Margin, He that feedeth *Gluttons*, &c. There is also a Marginal Reference to Chap. 29. 3. where it is said, He that keepeth Company with Harlots spendeth his substance. In Latin these Texts are turned by Hieron, Pagnine, Montanus, Tremellius and Junius, by the words *Commissatio*, *Commissator*, and *Comedo* (an old obsolete word) all signifying *Gluttonous Gourmandizing*, or inordinate Eating and Drinking, whereby men do *Riotously* waste and consume their Estates. Let this suffice, without particular Application, to shew what *Rioting* and *Rioters* are in Scripture sense.

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